

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HYPERQUEST, INC.,

Plaintiff,

v.

NUGEN I.T., INC., and DAYLE PHILLIPS,

Defendants.

Case No. 1:08-cv-00485

**DEFENDANTS' MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

Come now, the Defendants, NuGen I.T., Inc. and Dayle Phillips, and respectfully request this Court enter its Order dismissing this matter for lack of subject matter jurisdiction. In support of their Motion, Defendants inform the Court that Plaintiff HyperQuest, Inc. filed this action on January 22, 2008, the same date it filed a nearly-identical Complaint in this Court, *HyperQuest, Inc. v. N'Site Solutions, Inc. & Unitrin Direct Auto Insurance*, Case No. 08-cv-483. On May 1, 2008, the Honorable Milton I. Shadur entered his Order dismissing that action for lack of subject matter jurisdiction, on the basis that Plaintiff HyperQuest is not an exclusive licensee of any of the rights it is asserting with regard to the subject software, and is thus without standing to bring an action for copyright infringement of the software. Defendants respectfully submit that the same result should occur here. A Memorandum in support of this Motion is simultaneously filed herewith.

REQUEST FOR RELIEF

Defendants NuGen, I.T., Inc. and Dayle Phillips respectfully ask that this Court enter its Order:

1. Dismissing this action for lack of subject matter jurisdiction;
2. Awarding Defendants' fees and costs incurred in bringing this Motion; and
3. Awarding such other, further, and different relief, as this Court deems just.

Dated this 14th day of May, 2008.

Respectfully submitted,

NUGEN I.T., INC. AND DAYLE PHILLIPS

By: s/ **Nora M. Kane**
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of May, 2008, I electronically filed the foregoing Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction using the CM/ECF system which sent notification of such filing to all counsel of record, properly addressed as follows:

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s/ **Nora M. Kane**

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